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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/690,149	10/21/2003	Michael H. Mackin	OM136	3911

26009 7590 01/30/2007

ROGER M. RATHBUN
13 MARGARITA COURT
HILTON HEAD ISLAND, SC 29926

EXAMINER	
GILBERT, SAMUEL G	
ART UNIT	PAPER NUMBER
3735	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/30/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/690,149	MACKIN ET AL.	
	Examiner	Art Unit	
	Samuel G. Gilbert	3735	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-22* is/are pending in the application.

4a) Of the above claim(s) *11-15* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-10,16-19,21 and 22* is/are rejected.

7)☒ Claim(s) *20* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *21 October 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *5/3./2004; 2/22/2005*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-10 and 16-22 drawn to a combination of an infant care apparatus and a sensor, classified in class 600, subclass 22.

II. Claims 11-15, drawn to a sensor, classified in class 600, subclass 344.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the combination does not require a housing or the particulars of the housing. The subcombination has separate utility such as use with an adult patient after an arrhythmia event.

The examiner has required restriction between combination and subcombination inventions. Where applicant elects a subcombination, and claims thereto are subsequently found allowable, any claim(s) depending from or otherwise requiring all the limitations of the allowable subcombination will be examined for patentability in accordance with 37 CFR 1.104. See MPEP § 821.04(a). Applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or

includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

During a telephone conversation with Mr. Roger Rathbun on 1/9/2007 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-10 and 16-22. Affirmation of this election must be made by applicant in replying to this Office action. Claims 11-15 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Information Disclosure Statement

The information disclosure statements filed 5/3/2004 and 2/22/2005 have been considered.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Heflin, Sr. (3,638,642).

Element -52- is a base, un-numbered mattress, column 2 line 23, is a patient platform, elements -12-, -14-, and -16- are patient sensors, element -18- is a transmitter, element -22- is a receiver affixed to the apparatus.

Claim 2 - the examiner is considering element -10- as an enclosure.

Claim 3 - the examiner is considering the bed as an infant apparatus capable of treating an infant.

Claims 4-6 - the sensors include at least a temperature and EKG sensor.

Claim 7 - elements -30-, -32- and -34- provide visual display devices.

Claims 8 and 9 - the visual displays are affixed and integrated by element -48-.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Heflin Sr. (3,638,642) in view of Petersen et al (6,616,606).

Heflin teaches a device as claimed but does not include a secondary transmitter for further transmitting the signals received from the transmitter to a remote receiver. Petersen et al teaches patient monitoring with a device local to the patient including a transmitter for transmitting the acquired information to a central monitoring station. It would have been obvious to one of ordinary skill in the medical arts at the time the invention was made to include the secondary transmitter as taught by Petersen et al with the device of Heflin Sr. to provide the ability of having a limited number of clinicians monitor all the patients as taught by Petersen et al.

Claims 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilker (5,162,038) in view of Harry et al (2002/0099277).

Claim 16 - Wilker teaches a method of providing an infant warmer, element -26- provides a display, providing a sensor -20-, using the sensor to detect a physiological property, temperature, but transmits the detected information by a wired system not a wireless system. Harry et al teaches a sensor using wireless transmission of physiological properties of the patient. Harry et al teach wired or wireless sensors may be used, paragraph [0029]. It would have been obvious to one of ordinary skill in the medical arts at the time the invention was made to us a wireless sensor as taught by Harry et al and the required transmission apparatus in place of the wired sensor of

Wilker to provide benefits as follows. The use of wireless transmission eliminates wires that may become tangled and pull the sensor from the infant of endanger the health of the infant. Further, wireless systems allow for the use of disposable electrodes therefore providing the benefit of eliminating transfer of germs from the infant currently using the device to the next infant to use the device.

Claim 17 - the sensor of Harry et al is capable and adapted to detect ECG and skin temperature.

Claim 18 - Wilker uses the detected skin temperature to control the amount of heat emitted, column 5 lines 11-22.

Claims 19, 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilker 5,162,038 and Harry et al 2002/0099277 as applied to claims 16-18 above, and further in view of Koch et al (5,376,761).

The above combination teaches an infant warmer having a patient sensor, a wireless transmitter and a wireless receiver, but does not teach a scale to measure the weight of the patient. Koch et al 5,376,761 teaches an infant warming device including an infant scale -32-. It would have been obvious to one of ordinary skill in the medical arts at the time the invention was made to incorporate the concept of the infant scale as taught by Koch et al with the combination above to provide the beneficial capability of weighing the infant to provide an indication of well-being and growth of the infant as taught by Koch et al., column 1 lines 22 and 23.

Claim 21 - when the transmitter 16 is connected to the sensors the examiner is considering the connection hard wired.

Allowable Subject Matter

Claim 20 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Patent and Patent Publications 5,748,103, 2002/0196141, and 2002/0044059 teach related infant warmers and communication devices.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samuel G. Gilbert whose telephone number is 571-272-4725. The examiner can normally be reached on Monday-Friday 6:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor II can be reached on 571-272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Samuel G. Gilbert
Primary Examiner
Art Unit 3735

sgg